

JIMMY LEE DAVIS,  
Plaintiff,  
  
v.  
  
CITY OF SAN FRANCISCO,  
Defendant.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. 19-cv-03419-PJH

**ORDER ADOPTING MAGISTRATE  
JUDGE'S REPORT AND  
RECOMMENDATION AND  
DISMISSING CASE WITH LEAVE TO  
AMEND**

Re: Dkt. Nos. 6, 11, 12, 13

The court has reviewed Magistrate Judge Joseph C. Spero's Report and Recommendation Re: Review of Complaint Under 28 USC Section 1915, as well as plaintiff's objections to the report and other, subsequent filings. The court finds the report correct, well-reasoned and thorough, and adopts it in every respect. Accordingly, the case is DISMISSED WITH LEAVE TO AMEND.<sup>1</sup>

In particular, the court emphasizes that a complaint filed in forma pauperis is reviewed pursuant to 28 U.S.C. § 1915. That review “accords judges . . . the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Denton v. Hernandez, 504 U.S. 25, 32–33 (1992) (“a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”) (quoting Neitzke v. Williams, 490 U.S.

<sup>1</sup> Plaintiff's July 25, 2019 filing entitled "Complaint" is hereby STRICKEN. See Dkt. 13. Plaintiff appears to have attempted to amend his complaint while Magistrate Judge Spero's Report and Recommendation was pending. Nevertheless, plaintiff's attempt to amend his complaint did not fix the problems Magistrate Judge Spero's Report and Recommendation identified. Plaintiff's "Motion to Avert Dismissal" (Dkt. 12) is considered as part of plaintiff's objections to the Report and Recommendation, in conjunction with Dkt. 11.

1       319, 327 (1989)). “[C]laims describing fantastic or delusional scenarios” are clearly  
2       baseless. Id. Plaintiff’s complaint alleges a wide-ranging conspiracy between the mayor  
3       of San Francisco, her son, FBI agents, the SWAT Team, the District Attorney of San  
4       Francisco, Magistrate Judge Beeler, plaintiff’s ex-fiancé, the Jewish Defense League,  
5       and others to—among other things—shoot at him on San Francisco public streets from  
6       roof tops and public transportation, armed with both live ammunition and pellet guns.  
7       Dkt. 1 at ECF pp. 4–5; Dkt. 11 at ECF p. 4; Dkt. 12 at ECF p. 2; Dkt. 13 at ECF pp. 1–2.  
8       Accordingly, under this court’s review compelled by 28 U.S.C. § 1915, the action is  
9       frivolous and is DISMISSED. See generally Burgess v. Bank of Credit & Commerce Int'l,  
10      996 F.2d 1223 (9th Cir. 1993).

11                  Any amended complaint shall be filed no later than September 13, 2019.

12                  No additional parties may be added to the amended complaint without leave of court.

13                  **IT IS SO ORDERED.**

14                  Dated: August 13, 2019



15                  PHYLLIS J. HAMILTON  
16                  United States District Judge

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